REMARKS

Status

A restriction requirement was required under 35 U.S.C. § 121. During a telephone conversation applicant provisionally elected, with traverse, to prosecute the claims in Group 1, Claims 1-10. Claims 11-20 have been withdrawn from further consideration by the Examiner, 37 C.F.R. § 1.142(b), as being drawn to a non-elected invention.

By this amendment, the specification has been amended to reflect the serial numbers of related cases. In addition, Applicants have amended Claims 1, 4, and 9, as well as canceled Claims 2, 3, 8, and 10. Accordingly, Claims 1, 4-7, and 9 are pending in this application, and are presented for reconsideration and allowance.

Specification

The Office Action indicated that the incorporation of essential material in the specification by reference to an unpublished U.S. application, foreign application or patent, or to a publication is improper. By this amendment, the specification has been amended to reflect the serial numbers of related cases in a proper manner.

Claim Objections

Claim 10 was objected to because of the following informalities: "wherein the 1". Claim 10 has been canceled.

Claim Rejection - 35 U.S.C. § 112

Claim 8 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as their invention. As stated above, Applicants have canceled Claim 8.

Claim Rejection - 35 U.S.C. § 101

Claims 1-10 were rejected under 35 U.S.C. § 101 because the disclosed invention is inoperative and therefore lacks utility. Claims 1-10 were

further rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

Applicants have amended independent Claims 1 and 9 in order to clarify and more particularly point out the invention. As amended, Applicants believe that Claims 1 and 9 are clearly directed towards statutory subject matter.

Amended Claim 1 is believed to be representative of the claims in the case. It relates to a method for determining the degree of interest for a plurality of digital images. These digital images are sequentially displayed on an electronic display for viewing by a user. The viewing time for each of the digital images is electronically monitored, and the degree of interest for the images is determined using this electronic monitoring. The electronic information indicating the degree of interest is stored as image metadata associated with the plurality of digital images. In Claim 9, the image metadata is stored in a personal affective tag.

Applicants believe that all claims present in the case are statutory subject matter. If the Examiner has problems with the form of these claims a telephone call would be appreciated.

The Office Action on page 6 states that "[t]here is no practical or sufficient universal evidence supporting a sustainable correlation between the duration a user view a digital image and affective information for that digital image." Applicants direct the Examiner to page 12, lines 19-30 of Applicants' specification, which refers to a publication entitled "Looking At Pictures: Affective, Facial, Visceral, and Behavioral Reactions." This publication presents data and descriptions which indicate that viewing time linearly correlates with the degree of the interest or attention an image elicit in an observer. Such a relationship allows interpreting the viewing time as the user's degree of interest toward a specified image. Applicants submit that there is practical evidence to support a correlation between the duration a user views a digital image and affective information for that image. Accordingly, Applicants believe that pending Claims 1, 4-7, and 9 are operative and have utility. One advantage of Applicants' claimed invention is to provide personalized affective information associated with digital images. This information provided for unique personal

classification of such digital images for future retrieval, communication and sharing, advertising, and marketing.

The Office Action on page 6 also indicates that "using viewing intervals or time to determine affective information for a digital image constitutes not merely a detection for the presence of affective information, but yet furthermore imposes a determination as to what is the affective information and to determine this solely from the user's viewing intervals or time, does not seem possible." In addition to the statements made above in connection with the statutory compliance of the amended claims, Applicants wish to point out that independent Claims 1 and 9 have been amended to particularly point out that the electronically monitored viewing time is used to *determine the degree of interest* for the plurality of the digital images. Applicants believe that this method of determining the degree of interest for images is operable, has utility, and is non-obvious.

Accordingly, Applicants believe that for at least the above reasons, the pending claims are operative and have utility. Thus, Applicants submit that the pending claims meet the statutory requirements, and are in condition for allowance.

Claim Rejection - 35 U.S.C. § 103(a)

Claims 1 and 9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over JP Pat. No. 10143680 (hereinafter, *Maehara*).

Applicants have amended Claims 1 and 9 in order to more particularly point out their invention, as described above.

Maehara relates to adjustment of a video to impart an emotional or sensitive feeling such as a sense of speed. Applicants submit that *Maehara* fails to show or suggest the feature of using the electronically monitored viewing time to determine the degree of interest for the plurality of digital images. *Maehara* teaches techniques of speeding up a video sequence in order that the viewer experience a sense of speed, or other designation of a kind of feeling to be applied to the observer of a video. This is distinctly different from Applicants' claimed invention, which electronically *monitors* viewing time to *determine* a viewer's *degree of interest*.

Furthermore, Applicants respectfully submit that *Maehara* fails to show or suggest Applicants' feature of storing electronic information indicating the degree of interest as image metadata associated with the plurality of digital images. *Maehara* indicates that a database stores a constant corresponding to the kind of feeling to be applied to the observer of a video – this is clearly different from storing information indicating user interest as metadata. Furthermore, Applicants fail to find any motivation for the subject matter set forth in independent Claim 1 and 9.

Accordingly, Applicants submit that *Maehara* fails to show or suggest the subject matter of Applicants' independent Claims 1 and 9. Therefore, Applicants believe that the dependent claims should also be allowed along with Claim 1.

Claim 4 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Maehara* as applied to Claim 1 above, further in view of U.S. Patent Application Publication No. 2003/0063798 to Li et al. (hereinafter, *Li*), and further in view of JP 20011320743 (hereinafter, *Ochiai*). As discussed above, Applicants submit that *Maehara* fails to show or suggest using the electronically monitored viewing time to determine the degree of interest for the plurality of digital images.

Applicants further submit that neither *Li* nor *Ochiai*, whether taken alone or in combination, make up for the deficiencies of *Maehara*. The Office Action on page 10 cites paragraph [0035] of *Li* as indicating that the affective information provides the degree of interest of the user. *Li* relates to to a video summarization video of a football game which provides the same level of excitement the the original game provided. The methods of processing video football games of *Li* do not *determine the degree of interest of the user*. Rather, the methods of *Li* are used to identify the relevant portions of a typical football video in order to create a summary video of the game.

As the Office Action on page 10 states that *Maehara* and *Li* do not disclose "with the average viewing time for the plurality of digital images," the "Solution" portion of *Ochiai* is cited as indicating this portion of Applicants' claimed invention. *Ochiai* relates to a method for summing up viewer information on a program viewed. *Ochiai* also includes a method for an

advertising contract to determine an advertising rate which utilizes the the number of *total* viewing times of a video. Clearly, keeping track of *total time* of video viewing is different from Applicants' claimed invention where the degree of interest of a user is determined by relating the viewing time for at least *one digital image* with the *average viewing time* for the *plurality of digital images*. Accordingly, Applicants respectfully submit that neither *Maehara*, *Li*, nor *Ochiai*, whether taken singly or in combination, show or suggest Applicants' invention. Therefore, Applicants believe Claim 4 is allowable.

Claims 5-8 were rejected under 35 U.S.C. § 103(a) as being unpatetnable over *Maehara* as applied to Claim 1 above, and further in view of U.S. Patent No. 5,802,220 to Black et al. (hereinafter, *Black*). The same arguments set forth above with regard to Claim 1 are equally applicable with respect to the rejections of Claims 5-7, which ultimately depend from Claim 1. *Black* fails to make up for these previously-discussed deficiencies. As noted above, Applicants have canceled Claim 8. Accordingly, Applicants believe that claims 5-7 are in condition for allowance.

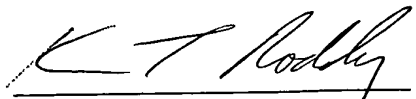
Claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatetnable in view of *Black*. The Office Action on page 13 cites col. 1, lines 35-38 and col. 3, lines 39-67 of *Black* as showing affective information being stored in a personal affective tag. This feature is now included in Claim 9.

Summary

It is believed that these changes now make the claims clear and definite and, if there are any problems with these changes, Applicants' attorney would appreciate a telephone call.

In view of the foregoing, it is believed none of the references, taken singly or in combination, disclose the claimed invention. Accordingly, this application is believed to be in condition for allowance, the notice of which is respectfully requested.

Respectfully submitted,



Kevin T. Roddy
Attorney for Applicants
Registration No. 50,577

Rochester, NY 14650-2201
Telephone: (585) 722-9349
Facsimile: (585) 477-4646

If the Examiner is unable to reach the Applicant(s) Attorney at the telephone number provided, the Examiner is requested to communicate with Eastman Kodak Company Patent Operations at (585) 477-4656.